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FILED IN THE U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MAY 09 2019

SEAN F. McAVOY, CLERK
DEPUTY
RICHLAND, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

2:18-CR-00134-SMJ

v.

Plea Agreement

RANDY COY JAMES HOLMES
(a/k/a "Randy Coy James"),

Defendant.

Plaintiff, United States of America, by and through Joseph H. Harrington,
United States Attorney for the Eastern District of Washington, and Patrick J.
Cashman, Assistant United States Attorney for the Eastern District of Washington,
and Defendant Randy Coy James Holmes and the Defendant's counsel, Carl
Oreskovich, agree to the following Plea Agreement:

1) Guilty Plea and Maximum Statutory Penalties:

The Defendant agrees to plead guilty to the sole count of the Indictment filed on
August 7, 2018, charging the Defendant with Felon in Possession of a Firearm and
Ammunition, in violation of 18 U.S.C. §§922(g)(1), 924(a)(2). The Defendant,
understands that the charge contained in the Indictment is a Class C felony. The
Defendant also understands that the maximum statutory penalty for Felon in
Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§922(g)(1),
924(a)(2), is: (1) not more than 10 years imprisonment; (2) a fine not to exceed

1 \$250,000; (3) a term of supervised release of not more than 3 years; and (4) a \$100
2 special penalty assessment.

3 The Defendant understands that a violation of a condition of supervised release
4 carries an additional penalty of re-imprisonment for all or part of the term of
5 supervised release without credit for time previously served on post-release
6 supervision.

7 2) The Court is Not a Party to the Agreement:

8 The Court is not a party to this Plea Agreement and may accept or reject this
9 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
10 Court. The Defendant understands that the Court is under no obligation to accept any
11 recommendations made by the United States and/or by the Defendant; that the Court
12 will obtain an independent report and sentencing recommendation from the U.S.
13 Probation Office; and that the Court may, in its discretion, impose any sentence it
14 deems appropriate up to the statutory maximums stated in this Plea Agreement.
15 The Defendant acknowledges that no promises of any type have been made to the
16 Defendant with respect to the sentence the Court will impose in this matter. The
17 Defendant understands that the Court is required to consider the applicable sentencing
18 guideline range, but may depart upward or downward under the appropriate
19 circumstances.

20 The Defendant also understands that should the sentencing judge decide not to
21 accept any of the parties' recommendations, that decision is not a basis for
22 withdrawing from this Plea Agreement or a basis for withdrawing this plea of guilty.

23 3) Waiver of Constitutional Rights:

24 The Defendant understands that by entering this plea of guilty the Defendant is
25 knowingly and voluntarily waiving certain constitutional rights, including:

- 26 a) The right to a jury trial;
- 27 b) The right to see, hear and question the witnesses;
- 28 c) The right to remain silent at trial;

- 1 d) The right to testify at trial; and
2 e) The right to compel witnesses to testify.

3 While the Defendant is waiving certain constitutional rights, the Defendant
4 understands the Defendant retains the right to be assisted through the sentencing and
5 any direct appeal of the conviction and sentence by an attorney, who will be appointed
6 at no cost if the Defendant cannot afford to hire an attorney. The Defendant also
7 acknowledges that any pretrial motions currently pending before the Court are waived.

8 4) Elements of the Offense:

9 The United States and the Defendant agree that in order to convict the
10 Defendant of Felon in Possession of a Firearm and Ammunition, in violation of 18
11 U.S.C. §§922(g)(1), 924(a)(2), the United States would have to prove beyond a
12 reasonable doubt the following elements:

13 *First*, on or about August 7, 2017, within the Eastern District of Washington,
14 the Defendant knowingly possessed a firearm and ammunition, to wit: a Ruger,
15 .22 caliber pistol, bearing an obliterated serial number; two (2) rounds of
16 Winchester .22 caliber ammunition bearing head stamp "REM"; and seven (7)
rounds of Winchester .22 caliber ammunition bearing head stamp "SUPER X";

17 *Second*, the firearm and ammunition had been shipped or transported in
18 interstate commerce; and

19 *Third*, at the time the Defendant possessed the firearm, the Defendant had been
20 convicted of a crime punishable by imprisonment for a term exceeding one
year.

21 5) Factual Basis and Statement of Facts:

22 The United States and the Defendant stipulate and agree that the following facts
23 are accurate; that the United States could prove these facts beyond a reasonable doubt
24 at trial; and these facts constitute an adequate factual basis for Defendant's guilty plea.
25 This statement of facts does not preclude either party from presenting and arguing, for
26 sentencing purposes, additional facts which are relevant to the guideline computation
27 or sentencing, unless otherwise prohibited in this agreement.
28

1 On August 7, 2017, a Deputy Sheriff from the Grant County Sheriff's Office,
2 observed a red pickup truck exiting the "College Apartments" located at 4278 Grape
3 Dr. NE, in Moses Lake, Washington. The Deputy observed that the driver of the truck
4 was not wearing a seatbelt. The Deputy initiated a traffic stop, and upon contacting the
5 driver of the truck, learned that his license was suspended. The Deputy also observed
6 that there were three other passengers located in the truck. The Defendant was
7 identified as seated in the rear passenger side seat. Another passenger, Michael
8 Guerra, was arrested pursuant to an arrest warrant. As the deputies had the remaining
9 passengers exit the truck, the deputies observed a suspected firearm located behind the
10 front passenger seat as well as a firearm partly protruding from the front of the front
11 passenger seat.

12 Upon execution of a search warrant, the deputies located a .22 caliber Ruger
13 pistol in the passenger side rear seat foot well, beneath the front passenger side seat.
14 This firearm was within arms-length of the Defendant was seated. Upon observing
15 the firearm it was determined the firearm had an obliterated serial number. The .22
16 caliber Ruger was loaded with two (2) rounds of .22 caliber Winchester ammunition
17 bearing head stamp "REM" and seven (7) rounds of Winchester .22 caliber
18 ammunition bearing head stamp "SUPER X." Subsequent fingerprint testing by the
19 Washington State Patrol Crime Laboratory determined that a one friction ridge
20 impression was developed on the firearm. The forensic scientist determined that the
21 source of this impression was the Defendant.

22 A Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") Special
23 Agent conducted an interstate nexus examination of the firearm and ammunition and
24 determined that the firearm and ammunition were manufactured outside the State of
25 Washington. Therefore, it was the Special Agent's opinion that the firearm and
26 ammunition travelled in interstate commerce.

27 A review of the Defendant's criminal history reveals that he has previously
28 been convicted of a felony offense with a maximum term of imprisonment that

1 exceeded one year. Therefore, pursuant to this conviction, the Defendant is prohibited
2 from possessing any firearm or ammunition.

3 6) The United States Agrees Not to File Additional Charges:

4 The United States Attorney's Office for the Eastern District of Washington
5 agrees not to bring any additional charges against the Defendant based upon
6 information in its possession at the time of this Plea Agreement arising out of
7 Defendant's conduct involving illegal activity charged in this Indictment, unless the
8 Defendant breaches this Plea Agreement any time before sentencing.

9 7) United States Sentencing Guideline Calculations:

10 The Defendant understands and acknowledges that the United States Sentencing
11 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will
12 determine the Defendant's applicable sentencing guideline range at the time of
13 sentencing.

14 a) Base Offense Level:

15 The United States and the Defendant agree that the base offense level for Felon
16 in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. §§922(g)(1),
17 924(a)(2) is 14. *See* USSG §2K2.1(a)(6).

18 b) Specific Offense Characteristics:

19 The parties agree and stipulate that the base offense is increased by an
20 additional four (4) levels because the firearm had an obliterated serial number. *See*
21 USSG §2K2.1(b)(4)(B).

22 The parties make no agreements regarding the application of any other specific
23 offense characteristics. The parties are free to recommend or object to the application
24 of any other specific offense characteristics.

25 c) Acceptance of Responsibility:

26 If the Defendant pleads guilty and demonstrates a recognition and an
27 affirmative acceptance of personal responsibility for the criminal conduct; provides
28 complete and accurate information during the sentencing process; does not commit

1 any obstructive conduct; accepts this Plea Agreement; and enters a plea of guilty no
2 later than May 9, 2019, the United States will move for a three (3) level downward
3 adjustment in the offense level for the Defendant's timely acceptance of responsibility,
4 pursuant to U.S.S.G. §3E1.1(a) and (b).

5 The Defendant and the United States agree that the United States may at its
6 option and upon written notice to the Defendant, not recommend a three (3) level
7 downward reduction for acceptance of responsibility if, prior to the imposition of
8 sentence, the Defendant is charged or convicted of any criminal offense whatsoever or
9 if the Defendant tests positive for any controlled substance.

10 d) Final Adjusted Offense Level:

11 The parties make no agreement as to the final adjusted offense level.

12 e) Criminal History:

13 The United States and the Defendant understand that the Defendant's criminal
14 history computation is tentative and that ultimately the Defendant's criminal history
15 category will be determined by the Court after review of the Presentence Investigative
16 Report. The United States and the Defendant have made no agreement and make no
17 representations as to the criminal history category, which shall be determined after the
18 Presentence Investigative Report is completed.

19 8) Departures:

20 The Defendant intends to request a downward departure from the sentencing
21 guidelines. The United States reserves its right to oppose any downward departure.

22 9) Incarceration:

23 The United States agrees to recommend that the Court impose a sentence at the
24 low-end of the applicable sentencing guideline range as determined by the Court. The
25 Defendant may recommend any legal sentence he deems appropriate.

26 10) Criminal Fine:

27 The parties are free to make whatever recommendation concerning the
28 imposition of a criminal fine that they believe is appropriate.

11) Supervised Release:

The parties agree to recommend that the Court impose a three (3) year term of supervised release to include the following special conditions, in addition to the standard conditions of supervised release:

- a) that the Defendant participate and complete such drug testing and drug treatment programs as the Probation Officer directs; and
- b) that the Defendant's person, residence, office, vehicle, and belongings are subject to search at the direction of the Probation Officer.

12) Mandatory Special Penalty Assessment:

The Defendant agrees to pay the \$100 mandatory special penalty assessment to the Clerk of Court for the Eastern District of Washington, at or before sentencing, pursuant to 18 U.S.C. §3013 and shall provide a receipt from the Clerk to the United States before sentencing as proof of this payment.

13) Payments While Incarcerated:

If the Defendant lacks the financial resources to pay the monetary obligations imposed by the Court, the Defendant agrees to earn the money to pay toward these obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

14) Judicial Forfeiture:

The Defendant agrees to voluntarily forfeit any and all right, title and interest he has in the following listed assets in favor of the United States, including, but not limited to:

- two (2) rounds of Winchester .22 caliber ammunition bearing head stamp "REM.; and,

- seven (7) rounds of Winchester .22 caliber ammunition bearing head stamp "SUPER X".

Defendant agrees that the ammunition covered by this agreement are subject to forfeiture as property facilitating or involved in illegal conduct in violation of 18

1 U.S.C. §§ 922(g)(1), 924(a)(2), Felon in Possession of Firearm and Ammunition, and
2 are therefore forfeitable to the United States pursuant to 18 U.S.C. § 924(d)(1) and 28
3 U.S.C. § 2461(c).

4 The Defendant agrees to take all steps as requested by the United States to pass
5 clear title to the assets to the United States and to testify truthfully in any forfeiture
6 proceeding.

7 The Defendant agrees to hold all law enforcement and the United States, its
8 agents, and its employees harmless from any claims whatsoever arising in connection
9 with the seizure and forfeiture of any asset(s) covered by this agreement. Defendant
10 consents to the forfeiture and disposal of assets without further notice.

11 The Defendant further agrees to waive all constitutional, equitable and statutory
12 challenges in any manner (including direct appeal, habeas corpus, or any other means)
13 to any forfeiture carried out in accordance with this Plea Agreement on any grounds,
14 including that the forfeiture constitutes an excessive fine or punishment. Defendant
15 knowingly and voluntarily waives his right to a jury trial on the forfeiture of the
16 asset(s). Defendant waives oral pronouncement of forfeiture at the time of sentencing,
17 and any defects that may pertain to the forfeiture.

18 15) Additional Violations of Law Can Void Plea Agreement:

19 The parties agree that the United States may at its option and upon written
20 notice to the Defendant, withdraw from this Plea Agreement or modify its
21 recommendation for sentence if, prior to the imposition of sentence, the Defendant is
22 charged or convicted of any criminal offense whatsoever or if the Defendant tests
23 positive for any controlled substance.

24 16) Appeal Rights:

25 Defendant understands that he has a limited right to appeal or challenge the
26 conviction and sentence imposed by the Court. Defendant hereby expressly waives
27 his right to appeal his conviction and the sentence the Court imposes, including any
28 restitution order. Defendant further expressly waives his right to file any post-

1 conviction motion attacking his conviction and sentence, including a motion pursuant
2 to 28 U.S.C. §2255, except one based upon ineffective assistance of counsel based on
3 information not now known by Defendant and which, in the exercise of due diligence,
4 could not be known by Defendant by the time the Court imposes the sentence.


5 17) Integration Clause:

6 The United States and the Defendant acknowledge that this document
7 constitutes the entire Plea Agreement between the United States and the Defendant,
8 and no other promises, agreements, or conditions exist between the United States and
9 the Defendant concerning the resolution of the case. This Plea Agreement is binding
10 only upon the United States Attorney's Office for the Eastern District of Washington,
11 and cannot bind other federal, state or local authorities. The United States and the
12 Defendant agree that this agreement cannot be modified except in a writing that is
13 signed by the United States and the Defendant.

14 Approvals and Signatures

15
16 Agreed and submitted on behalf of the United States Attorney's Office for
17 the Eastern District of Washington.

18 Joseph H. Harrington
19 United States Attorney

20
21  B. Seal for
P. Cashman
22 Patrick J. Cashman
23 Assistant U.S. Attorney

24
25
26
27
28
5-9-19
Date

1 I have read this Plea Agreement and have carefully reviewed and discussed
2 every part of the agreement with my attorney. I understand and voluntarily enter into
3 this Plea Agreement. Furthermore, I have consulted with my attorney about my
4 rights, I understand those rights, and I am satisfied with the representation of my
5 attorney in this case. No other promises or inducements have been made to me, other
6 than those contained in this Plea Agreement and no one has threatened or forced me in
7 any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am
8 guilty.
9

10 Randy HOLMES
11 Randy Coy James Holmes
12 Defendant

5-9-19
Date

13 I have read the Plea Agreement and have discussed the contents of the
14 agreement with my client. The Plea Agreement accurately and completely sets forth
15 the entirety of the agreement between the parties. I concur in my client's decision to
16 plead guilty as set forth in the Plea Agreement. There is no legal reason why the
17 Court should not accept the Defendant's plea of guilty.
18

19 Carl Oreskovich
20 Attorney for the Defendant

5-9-19
Date